venience and hardship on the defendant against the benefits and advantages to the plaintiff, and the court's decision in this case showed that the scales were carried in favor of the defendant. See also 16 MICH. L. REV. 647.

INTERNAL REVENUE—FEDERAL ESTATE TAX—CHARGE ON RESIDUARY ESTATE.—Suit for instructions by executors against the trustee under testator's will, and others. *Held,* The Federal Estate Tax imposed by Act of Congress Sept. 8, 1916, as amended by Act March 3, 1917, and Act October 3, 1917, is chargeable entirely against the residuary estate and not apportionable pro rata among all devisees and legatees. *Plunkett* v. *Old Colony Trust Co.* (Mass., 1919), 124 N. E. 265.

The court in this case based its decision on the fact that the tax is characterized, in the titles of the relevant sections of the statutes, as an "Estate Tax," and that it is "imposed upon the transfer of each net estate of every decedent," and is to be paid out of the estate before distribution; fortified by two further considerations, viz. (1) the contrast between the terms of these acts and those of the War Revenue Act of 1898, (30 U. S. Stats. at Large 464), which imposed a tax on legacies and distributive shares; and (2) the design to establish an estate tax rather than a legacy tax, as clearly manifested in the report of the Ways and Means Committee of the House of Representatives, to which the bill had been referred. Though the present case treats the tax as a charge upon the residue, the suggestion in the final paragraph of the opinion that the testator might have provided in his will for its ultimate incidence at some other point seems deserving of greater consideration. In the case of a will executed before the passage of an act, giving legacies to collateral relatives, and naming testator's children as residuary legatees, it was held unjust to the latter to deduct the tax *in toto* from he residue as in the case of administration expenses, and accordingly the tax was apportioned among the several legacies—*In re Douglass' Estate,* 171 N. Y. S. 956. This point was also given great consideration by the lower court *In re Hamlin,* 172 N. Y. S. 787, where the tax was charged to the residuary estate because the will contained no specific directions for apportionment; affirmed in 226 N. Y. 407, where the decision was based chiefly, as in the principal case, on the intention of Congress. In *Fuller* v. *Gale,* 78 N. H. 544, the tax was directed to be paid out of the estate and charged pro rata to each beneficiary, though the court indicates that it would have given effect to an express direction by the testator to the contrary. It is submitted that this decision was wrong, inasmuch as the legacies were for definite amounts, which seems inconsistent with an intention to give these definite amounts less the tax.

LIBEL AND SLANDER—QUALIFIED PRIVILEGES—COMMENT ON PUBLIC ACTS OF PUBLIC OFFICIALS.—The defendant publishing company published comments and criticisms in its newspaper upon the punishment of prisoners in the penitentiary of which the plaintiff was warden. This included the publication of a convict's letter, stating that a person had been strung up with his hands above his head to force a confession. Action for libel brought by the plaintiff warden and the court found, that the evidence showed the matter to be

substantially true and not actuated by any actual malice. *Held,* that there exists a qualified privilege of free comment upon public acts of public officials, which are of public interest and an action for libel will not lie. *McClung* v. *Pulitzer Publishing Co.* (Mo., 1919) 214 S. W. 193.

There is a great difference between criticism, even harsh and severe, whether in regard to a candidate for office, or misconduct of public officials in office, and the statement of *facts* against such a candidate or public official in office. There are cases which fail to observe this distinction, but *Post Publishing Co.* v. *Hallam,* 59 Fed. 530, and *Burt* v. *Advertiser Co.,* 154 Mass. 238 have clearly pointed this out. As said by Justice Holmes in the Massachusetts case, "we agree with the defendant that the subject was of public interest and that—the defendant would have the right to make fair comment, etc." But later he says "it is enough to say that it is not a justificaion that the defendant had reasonable cause to believe its charges to be true." There is a further question in this type of case, where the matter, published as facts, is not substantially true. In the principle case, as *dicta,* the court cited with approval a statement made in an earlier Missouri case, *Cook* v. *Pulitzer Publishing Co.,* 241 Mo. 326, "that where a defense of privileged comment on a matter of public interest is presented by the issues, the plaintiff may overcome the privilege pleaded, either by proof that the publication was inspired by actual malice, or that the facts published and commented upon were false." In this view they are sustained by many other jurisdictions, including an early Missouri case. *Smith* v. *Burrus,* 106 Mo. 94; *Burt* v. *Advertiser Co., supra; Post Publishing Co.* v. *Hallam, supra; Foster* v. *Scripps,* 39 Mich. 376; *Eviston* v. *Cramer et al.,* 57 Wis. 570; *Hamilton* v. *Eno,* 81 N. Y. 116; *People* v. *Fuller,* 238 Ill. 116. But there is a growing number of authorities toward the view that a public officer is amenable to criticism in a public newspaper on matters of public interest, without any liability on the part of the newspaper company, even if the facts were not substantially true, as long as there was probable cause to believe them to be true, and there was no improper motive in publishing. *Palmer* v. *Concord,* 48 N. H. 211; *O'Rourke* v. *Lewiston Daily Sun Publishing Co.,* 89 Me. 310; *Evening Post Co.* v. *Richardson,* 113 Ky. 641; *Neeb* v. *Hope,* 111 Pa. St. 145; *Ferber* v. *Gazette and Bulletin Publishing Co.,* 212 Pa. St. 367; 8 MICH. L. REV. 345. This same problem has also received much attention and debate in relation to candidates for office. 7 MICH. L. REV. 351; 18 MICH. L. REV. 1, 104; 23 HARV. L. REV. 413.

MASTER AND SERVANT—WORKMAN'S COMPENSATION LAW—"INJURY ARISING IN COURSE OF EMPLOYMENT"—ANTHRAX.—Servant's neck was slightly cut while being shaved at a barber shop, and on the following day, while working in a tannery handling hides, symptoms of anthrax first appeared, from which disease his death resulted. *Held,* his death was due to accidental injury "arising out of and in the course of his employment," and that his widow was entitled to compensation. *Eldridge* v. *Endicott, Johnson & Co., et al.* (1919) 177 N. Y. S. 863.

This decision seems to be a reversal of the result reached in this case in the lower court, reported in THE BULLETIN, N. Y. Vol. I, No. 8, p. 8 (cited